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Transitional Justice, States of Emergency and Business as Usual in Sierra Leone

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ABSTRACT

This article situates the establishment of the Special Court for Sierra Leone in the wider context of the country's transitional period between 1999 and 2004. During this pivotal period, Sierra Leone experienced a massive state-building intervention to establish the rule of law and introduce democracy. However, this new beginning was characterized by violent clashes between the leaders of the various warring factions who tried to secure political influence and security after the signing of the Lomé Peace Agreement in 1999. The article examines events that resulted in the unravelling of the peace agreement, the establishment of the Special Court and the arrests of hundreds of suspected rebels under a state of emergency, to show how they undermined the lofty promises of justice made by the representatives of the Special Court and the international community. It reveals the limited scope of the retributive project of international criminal justice at the intersections with the business-as-usual political manoeuvres that occurred after the end of the civil war.

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EXCEPTIONAL MEASURES: ‘OPERATION JUSTICE’

On 10 March 2003, investigators of the UN-backed Special Court for Sierra Leone and Sierra Leonean police officers carried out several arrests under the codename ‘Operation Justice’. They arrested the Minister for Internal Affairs, Sam Hinga Norman, who had led a pro-government militia, the Civil Defence Forces (CDF), during the civil war, and two former leaders of the Revolutionary United Front (RUF), the main rebel group fighting against successive governments and the CDF during the 1990s. More arrests were made in Pademba Road Prison in Freetown, where the former RUF leader Foday Sankoh and Alex Tamba Brima, a commander of the renegade soldiers who had formed the Armed Forces Revolutionary Council (AFRC) in May 1997, were transferred into the custody of the Special Court. Later that day, the five detainees were flown by helicopter to the Special Court’s detention facility on Bonthe Island, about 200 miles south-east of Freetown. Over the following months five more former commanders from the CDF, the RUF and the AFRC joined them. That left just three indicted men at large. One of them, the Liberian president Charles Taylor, was eventually arrested in March 2006.¹ The second, the former RUF-commander Sam ‘Maskita’ Bockarie, was killed in May 2003 in Liberia, where he had moved in December 1999. The third, the former AFRC leader Johnny Paul Koroma, had gone into hiding in January 2003 after he was accused of involvement in a botched attack on an armoury in Freetown.

According to the Special Court’s prosecutor, the former US Department of Defence lawyer David Crane, these men held ‘greatest responsibility’ for war crimes and crimes against humanity committed during the civil war in Sierra Leone. The Special Court had the mandate to try leaders of the various armed factions who were responsible for the atrocities committed against the civilian population. Prosecutions centred on charges of terrorizing the civilian population, enslavement, pillage, systematic killings, atrocities such as the

¹ The indictment against Charles Taylor is beyond the scope of this analysis, which only deals with the situation in Sierra Leone between 1999 and 2003. Taylor was indicted on 7 March 2003 and the indictment was unsealed in June 2003. Taylor left Liberia in August 2003 and went into exile in Nigeria where he remained until his arrest at the border with Cameroon in late March 2006. The trial against him lasted from June 2007 until March 2011; he was found guilty and sentenced to fifty years in prison in April 2012. The judgement was confirmed by the Appeals Chamber on 26 September 2013 and Taylor was transferred to the United Kingdom where he serves his sentence in Her Majesty’s Prison Frankland in County Durham.

amputation of limbs, sexual violence, the recruitment of child soldiers and violence against peacekeepers, hundreds of whom had been taken hostage by the RUF in May 2000. These crimes had attracted most attention both internationally and in Sierra Leone, where the RUF and AFRC committed many atrocities during their attack on Freetown in January 1999.

With ‘Operation Justice’ the Special Court signalled that ‘we mean business’ and that ‘no one is above the law’, according to Crane.² From his perspective, the Special Court made a crucial contribution to a new beginning in Sierra Leone. In another interview Crane stated: ‘in order for this country to move forward and have long-term peace, we have to stop impunity’.³ Other representatives of the court echoed Crane’s view. Geoffrey Robertson, the court’s first president, highlighted that the Special Court was unique as it was ‘established in the country where the crimes were committed and where its work can count as part of the reconciliation process’ (SCSL, 2003: 3). From the perspective of the UN, the establishment of the Special Court was necessary to address a ‘situation of impunity’⁴ in Sierra Leone, which justified this extraordinary measure. This view reflects the retributive vision of justice driving the promotion of international criminal tribunals; it has proved to be at odds with the ideas about reconciliation advanced by the Truth and Reconciliation Commission (TRC) in Sierra Leone, a tension examined in more detail below. According to resolution 1315 adopted by the UN Security Council in August 2000, ‘a credible system of justice and accountability... would contribute to the process of national reconciliation and to the restoration and maintenance of peace’. But what was the court’s impact on Sierra Leone’s social and political topography? Did it indeed send out the message that no one is above the law and contribute to a new beginning by charging a dozen men with war crimes and crimes against humanity?

Kelsall’s (2009) study of the Special Court for Sierra Leone disputes this claim by advancing a cultural relativist argument. According to Kelsall, cultural differences made ‘the application of international justice a fraught affair’ (ibid.: 17). The present analysis shares Kelsall’s critical perspective but adopts a more comprehensive approach that situates transitional justice mechanisms in wider debates and conflicts about transition and justice (see the Introduction to this issue). It focuses on the Special Court’s position in the context

² Interviews given by David Crane in March 2003: www.sierra-leone.org/Archives/slnews0303.html.

³ Interview with the author in Utrecht, The Netherlands, 11 June 2008.

⁴ Preamble of the Agreement between the UN and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.

of the political economy of the transition phase rather than cultural differences in the courtroom. Instead of limiting its scope to a particular institution, the article aims at elucidating the contradictions that characterized the transition period between 1999 and 2004. It shows that the official announcements issued by representatives of the UN, the Special Court and political leaders in Sierra Leone were in stark contrast to what actually happened during this period. Taking its cue from Shaw's (2010) perceptive study of continuities and contradictions between of the TRC and the Disarmament, Demobilization and Reintegration (DDR) programme in Sierra Leone, this analysis explores the intersections between related events and processes during the transition period. The Special Court's attempts to realize its promise of justice cannot be isolated from the political conflicts and the violent clashes between 2000 and 2003.

The court was established during a time characterized by intense power struggles and attempts of former military leaders to establish themselves in the post-conflict social and political order. Whilst it thwarted the ambitions of a few to convert their military exploits into political office or material benefits, it is open to debate whether the court actually contributed to a new beginning after the end of the civil war. In fact, the Special Court constituted just one of the influences shaping the reconfiguration of Sierra Leone's social and political order between 1999 and 2004. The analysis presented here traces the frantic jockeying for influence and security in the context of bitter and violent political conflicts that were at odds with the official commitments to justice and peace espoused by politicians and former military leaders. Some succeeded in converting their position into political and economic capital but others were less successful.

It is striking that when the Lomé Peace Agreement between the government and the RUF disintegrated in May 2000, several hundred former rebels of the RUF and the AFRC were arrested by the national authorities. Spending years in detention, more than eighty of them were eventually charged with treason, murder and related charges in the national courts. By contrast, the Special Court only charged thirteen individuals of which ten eventually stood trial. This discrepancy highlights the importance of the national arena for a comprehensive understanding of Sierra Leone's transition after the end of the civil war and underlines the need to examine a whole range of related events and developments in Sierra Leone between 1999 and 2004. Drawing on Fassin and Pandolfi (2010), this analysis shows that the exceptional circumstances that justified the interventions of the UN and the Special

Court were, in fact, not extraordinary from the perspective of political and military leaders who were doing business as usual, trying to outmanoeuvre their rivals in spite of grand announcements of a new beginning.

The article will first situate the Special Court's establishment within the context of the massive state-building exercise spearheaded by the UN mission to Sierra Leone and the debate about how to come to terms with the violent past after the end of the war. This debate revolved around several contentious issues including the blanket amnesty granted in the Lomé Peace Agreement, which had been signed by President Kabbah and RUF leader Foday Sankoh under intense international pressure, and the parallel operation of two transitional justice mechanisms. The second part of the article focuses on the bitter political conflicts between 1999 and 2003 and the violent clashes in May 2000 that triggered the establishment of the Special Court. These conflicts were characterized by the attempts of former commanders to convert their military strength into political, economic and social capital. After declaring a state of emergency, the government arrested hundreds of former rebels and conducted a number of criminal trials against RUF members and renegade soldiers. Finally, the third part situates the men arrested by the Special Court in 2003 in the context of the strategies and tactics employed by former military leaders and commanders to carve out a niche for themselves in the post-conflict order. It shows that the Special Court's impact remained relatively limited even though it thwarted the attempts of these men to conduct business as usual.

A NEW BEGINNING AND TRANSITIONAL JUSTICE

On 18 January 2002, then President Ahmad Tejan Kabbah officially declared the end of the civil war that had plagued Sierra Leone for more than a decade. Kabbah's announcement came a few days after the UN had reported the completion of the disarmament of 45,000 combatants belonging to the RUF, the AFRC and the pro-government CDF. At the time, the United Nations Mission in Sierra Leone (UNAMSIL) was at its peak with 17,500 military personnel deployed all over the country, providing security and overseeing the implementation of the DDR programme. A few months later, on 14 May 2002, general elections were held with incumbent president Kabbah and the Sierra Leone People's Party

(SLPP) winning a landslide victory with over 70 per cent of the vote.

In a nutshell, these events tell the story of a war-ravaged country slowly returning to normality with the assistance of UN peacekeepers who provided security and disarmed tens of thousands of fighters. It is a narrative of rebuilding a nation after the descent into chaos and violence had necessitated the intervention of the international community to stop the bloodshed and restore order. This transition from chaos to order features a sequence of steps beginning with the restoration of security, followed by the disarmament and reintegration of combatants, eventually culminating in democratic elections. This sequence is presented in terms of depoliticized technologies deployed to address technical challenges (Fassin and Pandolfi, 2010). In Sierra Leone, the stabilization and rebuilding of the country were supplemented by two transitional justice mechanisms, the UN-backed Special Court for Sierra Leone and the national TRC, both established in 2002. Coming to terms with the violent past by holding accountable those who committed crimes and establishing a historical record were seen as key to national reconciliation and creating the conditions for political and social stability — a veritable new beginning.

However, the transition period was much messier than this simplistic account suggests. Between 1999 and 2003, fierce and often violent political battles shaped the new beginning in Sierra Leone in contradictory and contested ways which were not reflected in the sequence from humanitarian intervention to transitional justice and eventually democratization and economic development. In July 1999, representatives of Kabbah's government and the RUF, the main rebel group, signed the Lomé Peace Agreement providing for the inclusion of the RUF in a government of national unity, a blanket amnesty for crimes committed during the civil war and the establishment of a Truth and Reconciliation Commission. But the peace process soon stalled. Parts of the RUF resisted disarmament and took 500 peacekeepers hostage in May 2000 (see below). During that month, the government of national unity unravelled. Foday Sankoh, the RUF leader, and hundreds of RUF members were arrested after several protesters were killed during a demonstration at Sankoh's residence in Freetown. Immediately after the arrest of the RUF members, Kabbah's government requested the establishment of an international criminal tribunal to try Sankoh and the RUF leaders 'for crimes against the people of Sierra Leone

and for taking of UN peacekeepers as hostages'.⁵ In August 2000, the UN Security Council authorized the establishment of an international criminal tribunal in Freetown with the mandate to hold accountable those 'bearing greatest responsibility' for war crimes and crimes against humanity (Resolution 1315). On 16 January 2002, the UN and the government of Sierra Leone signed an agreement to establish the Special Court,⁶ and in August 2002 the first registrar, the chief of the court's administration, and the first chief prosecutor, the Pentagon lawyer David Crane, arrived in Freetown, 'hitting the ground running', as Crane put it. Only seven months later Crane ordered 'Operation Justice'.⁷

The establishment of the Special Court resulted in the parallel operation of two transitional justice mechanism following different logics. The Special Court was built on the principle of retributive justice, the idea that a sense of closure depended on the punishment of those responsible for crimes, whereas the TRC was based on the notion that truth-telling and the establishment of an historical record would contribute to national reconciliation. In March 2002, the commissioners of the TRC were sworn in and in November 2002 statement takers fanned out over the country to document the civil war. The TRC held public hearings between April and August 2003 and published its final report, including a set of recommendations for the government, in October 2004 (TRC, 2004).

The parallel operation of these two very different transitional justice institutions proved to be difficult and their relationship was often characterized by tension and competition. There were two main reasons for this. First, both institutions relied on voluntary contributions and competed for the limited funding made available by the Western donor countries for transitional justice in Sierra Leone. In the end the Special Court was more successful in absolute terms, attracting initial funding of US\$ 56 million, less than half of what had originally been budgeted, whereas the TRC eventually received pledges of US\$ 4 million, also less than half of what had initially been budgeted (Schabas, 2003: 1039–40). Second, because of their parallel operation and debates about the scope of the amnesty granted under the Lomé Agreement, many people in Sierra Leone did not perceive the two institutions as separate entities with complementary mandates and therefore were not sure

⁵ Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the UN, addressed to the President of the Security Council (S/2000/786: Annex).

⁶ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court.

⁷ Interview with the author in Utrecht, The Netherlands, 11 June 2008.

where the line would be drawn between those who would be granted amnesty and those facing prosecution (Coulter, 2009; Shaw, 2005, 2010: 118–23).

Officially, the representatives of the Special Court denied that there were difficulties between the two institutions. According to the court's first annual report, 'both organisations recognised their respective roles and objectives and, overall, the relationship proved to be cordial' (SCSL, 2003: 6). From a legal perspective, there was no conflict, according to the architects of the Special Court, as the amnesty did not apply to crimes committed under international criminal law. Hence, the prosecution for war crimes and crimes against humanity did not contradict the amnesty granted under the Lomé Agreement.

The TRC was more candid about difficulties that were admitted by representatives of the Special Court only in private. According to the TRC report, the parallel existence of the two organizations 'highlighted the need for harmonisation and an operational model designed to mitigate inherent tensions and avoid potential pitfalls in future instances where a TRC and criminal court work are supposed to work in tandem' (TRC, 2004: 17). The TRC report highlighted the problems of the simultaneous operation in a context where a peace agreement provided for a blanket amnesty and the establishment of a truth commission. In fact, the establishment of the Special Court rescinded the amnesty for those accused of 'bearing greatest responsibility' for the crimes committed during the civil war. From the TRC's perspective, this was highly problematic since the commission 'was proposed as a substitute for criminal justice in order to establish accountability for the atrocities that had been committed during the conflict' and the creation of the Special Court 'signalled to combatants in future wars that peace agreements containing amnesty clauses ought not to be trusted and, in so doing, has undermined the legitimacy of such national and regional peace initiatives' (TRC, 2004: 18).

The TRC report was also highly critical of the government led by President Kabbah who had declared a state of emergency and arrested hundreds of suspected RUF members in May 2000. Many of them remained in detention without charge for years (TRC, 2004: 448–51). The next section will examine in more detail these arrests and the criminal trials carried out by the national authorities during Sierra Leone's volatile transition period.

THE STATE OF EMERGENCY AND POLITICAL CONFLICTS

The justification given for the foreign humanitarian-military interventions after 1999 and the establishment of two transitional justice mechanisms was the chaos of civil war that had been affecting Sierra Leone since 1991. From the perspective of diplomats and policy makers in New York, Washington and London, the situation in Sierra Leone constituted a threat to regional and global security. This concern added urgency to the diplomatic pressure exercised on the Sierra Leonean government to enter negotiations with the RUF and the renegade soldiers of the AFRC.

In May 1997, a group of junior soldiers in the AFRC, under the leadership of Major Johnny Paul Koroma, staged a coup against President Kabbah, forcing him into exile in Guinea for almost a year. The AFRC was eventually driven out of Freetown in February 1998; President Kabbah returned on 10 March, and immediately declared a state of emergency, which allowed the government to detain suspects without charge and to suspend civil rights. It did exactly that, arresting 1,600 suspected supporters of the RUF and AFRC.⁸ Most of them were soon released but at the end of March 1998 the Attorney-General charged fifty-nine of them with treason in connection with the 1997 coup. Among them was the RUF leader Foday Sankoh, who had been extradited from Nigeria where he had been under house arrest since March 1997. In July 1998, a court martial was held for a group of thirty-eight soldiers who had allegedly participated in the coup. Punishments handed down in the two trials were draconian. Thirty-two of those charged in the High Court, including Foday Sankoh, were found guilty and thirty-one of them received the death sentence. In the court martial, thirty-four were found guilty and received the death sentence. As the court martial did not provide for an appeal these executions were carried out one week after the judgement: on 19 October 1998, twenty-four soldiers were executed by firing squad on a beach near Freetown and the sentences of the remaining ten were commuted to life imprisonment. The appeals in the High Court cases were still pending when all the accused escaped during an assault by the AFRC and RUF on Freetown in January 1999 (Kandeh, 2004: 174; TRC, 2004: 307–16).

According to some observers (Bangura, 2000: 560; Kandeh, 2004: 175; Keen 2005: 220), the treason trials against alleged AFRC supporters and the execution of the twenty-four soldiers were perceived as deepening ethnic and political divisions between northerners, who

⁸ News reports for 26 March 1998: see www.sierra-leone.org/Archives/slnews0398.html

dominated the army, and people from the southeast, where the SLPP government enjoyed most support. The TRC report suggests that the execution of the soldiers alienated the RUF and the AFRC leadership from the government in Freetown and contributed to their decision to launch a counter-offensive in December 1998 that culminated in the attack on Freetown in January 1999 (TRC, 2004 315–16).

This offensive finally grabbed international headlines and after the ECOMOG⁹ peacekeeping troops led by Nigeria had repulsed the rebels of the AFRC and the RUF, international pressure on the government and the rebels to negotiate a peace agreement grew. The signing of the Lomé Agreement in June 1999 appeared to usher in a new spirit of cooperation and reconciliation between government and rebels. The state of emergency remained in force but the RUF transformed itself into a political party, the Revolutionary United Front Party (RUFP), and joined the SLPP in a government of national unity. The combatants of all armed groups were to participate in a DDR programme. UN peacekeepers arrived in the country to oversee the implementation of the Lomé Agreement.

In October 1999, some of the more educated RUF leaders — the ‘political wing’ (TRC, 2004: 335) — joined the government headed by President Kabbah as cabinet ministers and deputy ministers. RUF leader Foday Sankoh was appointed Chairman of the grandly named Commission for the Management of Strategic Resources, National Reconstruction and Development (CMMRD), a position with the status of Vice-President (ibid.: 349). The RUFP received four cabinet positions and four deputy minister positions. This was short of the promises made in Lomé, where the RUF had been promised a senior ministry such as Finance, Foreign Affairs or Justice (ibid.: 349). Meanwhile, the RUF field commanders who controlled large swathes of the north and east of the country were reluctant to disarm the forces under their command (ibid.: 337–9, 352–3). At this point, their relationship with the political leadership of the RUFP in Freetown was strained and communications were poor (ibid.: 353–5). The political leaders around Foday Sankoh, in turn, had an interest in keeping the armed cadres as an alternative option and for political leverage (ibid.: 362–4).

The reluctance of the RUF leadership to disarm led to several attacks by RUF combatants on UN peacekeepers who were tasked with disarming the RUF at the beginning of May 2000 and within a week more than 500 UN peacekeepers had been taken hostage by the RUF. These attacks on the peacekeepers were widely seen as a violation of the Lomé

⁹ The Economic Community of West African States Monitoring Group.

Peace Agreement and on 8 May 2000, thousands of people gathered at Sankoh's residence in Freetown in a peaceful protest. During the demonstration Sankoh's bodyguards opened fire and killed twenty-two demonstrators. Former AFRC soldiers loyal to Major Johnny Paul Koroma and CDF fighters who had joined the demonstration then attacked Sankoh's compound. Fifteen people in the compound were killed, but Sankoh and the senior RUF cadres present were able to escape. After nine days in hiding, Sankoh was arrested on 17 May 2000 (ibid.: 331–447).

In response to the violation of the Lomé Agreement, President Kabbah and his inner circle used a two-pronged strategy against the RUF. In August 2000, he sent a letter to the UN Security Council, urging it to establish a special court 'to try and bring to credible justice those members of the RUF and their accomplices responsible for committing crimes against the people of Sierra Leone and for taking of UN peacekeepers as hostages'.¹⁰ In Resolution 1315, the UN Security Council decided that the Special Court should have jurisdiction over members of all warring factions but limited it to those bearing 'greatest responsibility' for the crimes committed during the war. Earlier, however, on 7 and 8 May 2000, President Kabbah had used the state of emergency to order the arrest of almost 200 suspected members of the RUF. The TRC report criticizes Kabbah's government for using the violent incident as a pretext to end the RUF's participation in government. The TRC report concludes that several RUF ministers and some of Sankoh's bodyguards had already been arrested before the demonstration, on 7 May 2000, in a pre-emptive move authorized by the SLPP majority in parliament. In effect, this move dissolved the government of national unity even before the violent incident on 8 May 2000 (ibid.: 390–91). By the end of May 2000, the police had arrested several hundred suspected members of the RUF under the state of emergency (AI USA, 2001).¹¹

These arrests neutralized the RUF/RUF political leadership and effectively thwarted the attempts of some of its elements to convert their wartime exploits into political office. It also revealed a split between the RUF's political elite in Freetown and the 'military wing' — the field commanders who occupied large parts of the north and who did not seek to free the

¹⁰ UN Security Council S/2000/786 Letter dated 9 August 2000 from the permanent representative of Sierra Leone to the UN addressed to the President of the Security Council.

¹¹ In March 2002, the public prosecutor's office charged Sankoh and sixty RUF members with the murder of the protesters who were killed on 8 May 2000 at Sankoh's compound in Freetown; the other detainees were released.

arrested RUF members. After three weeks, and after negotiations with the Liberian President Charles Taylor, they released the UN peacekeepers. Issa Sesay emerged as the RUF's interim leader in May 2000; under his leadership, the RUF eventually agreed to resume disarmament in an agreement between the government and the RUF which was signed in May 2001 (ibid.: 461).

The arrests under the state of emergency did not only target the RUF. Between 2000 and 2003, the Sierra Leonean authorities arrested dozens of renegade soldiers who had belonged to the AFRC. Most of them were associated with a group of former AFRC members, the West Side Boys. These arrests came in two waves. In September 2000, a group of West Side Boys were arrested in the wake of a British commando raid to free British soldiers who had been taken hostage. Thirty-eight of them were charged with murder, conspiracy to murder and aggravated robbery. The second wave followed the attempted attack on an armoury near Freetown in January 2003 when about eighty individuals, mainly former members of the AFRC and West Side Boys, were arrested. Among them were Alex Tamba Brima, Bazzy Kamara and Santigie Borbor Kanu, who were later indicted for war crimes by the Special Court. The public prosecutor charged seventeen individuals with treason (AI USA, 2004). In December 2004, the High Court found eleven of them guilty, passing ten death sentences and one sentence of ten years imprisonment. In March 2006, the trials against fifty-seven former members of the RUF were eventually concluded. The High Court acquitted forty-two of the accused and found twenty-six guilty, passing prison sentences of up to ten years. In the trial against the West Side Boys, twenty-five accused were acquitted and six were sentenced to life imprisonment (AI USA, 2007). The eleven verdicts of treason of December 2004 were eventually overturned in December 2008, when the Court of Appeals acquitted the accused because of lack of evidence and released them.

The manner in which the government handled the detentions and trials provoked protests from Amnesty International and other human rights groups (AI USA, 2003). The TRC report also formulated a scathing critique of the use of the emergency powers to detain former RUF and AFRC members in 'safe custody' and to imprison them for years without trial (TRC, 2004: 72–4). Referring to the arrest of twenty-five members of the RUF in May 2000, who were held under emergency regulations for two years, the report concluded that:

The 25 men arrested on 7 May 2000 stand as living examples of the abuse of the justice system that persists in Sierra Leone. Their continued detention beyond the

morning of 8 May 2000 dealt a crushing blow to the causes of truth and reconciliation in Sierra Leone... There has been no transparency whatsoever in the disposal of 'justice' against these men. (ibid.: 397)

Based on these findings, the commission recommended the 'immediate release of all persons held in "safe custody detention"' (ibid.: 127) and the protection of fundamental human rights even under emergency regulations (ibid.: 129). It is noteworthy that the TRC translated this critique of Kabbah's government into 'imperative recommendations' (ibid.: 129) but the commission's critique of the arrest of the RUF members was never acknowledged by the government and President Kabbah never accepted any limitation of the emergency powers vested in him by the constitution (although he did refrain from using them after 2002).

The account of these arrests and detentions under a state of emergency undermine the official narrative of the country's slow emergence from civil war and chaos with the help of the 'international community' and the Special Court for Sierra Leone. It also raises doubts about the image of Kabbah's government as a champion of peace and reconciliation. The TRC report sketches a much more ambivalent picture in which President Kabbah and the SLPP used the emergency powers and the government's international legitimacy in a deliberate attempt to marginalize the leaders of the RUF and the AFRC who continued to threaten Sierra Leone's new beginning — although they, in turn, tried to conceal their plans behind the lofty language of peace, justice and national reconciliation. Even Foday Sankoh called for forgiveness after signing the Lomé Agreement when he said 'we are ready to give peace a chance', although many in Sierra Leone and abroad found it difficult to take this statement seriously.¹² By comparison, President Kabbah's commitment to peace seemed more credible and as legitimate head of state, elected in the 1996 elections, he enjoyed the support of the international community. It can be argued that, after the Lomé Peace Agreement unravelled, he used the emergency powers against the RUF and the AFRC because they were perceived to be a threat to the fragile peace agreement. These arrests and trials, however, were eclipsed by the trials at the Special Court for Sierra Leone involving the nine men charged with 'bearing greatest responsibility' for the crimes committed during the civil war.

¹² Sankoh's statement was made on 7 July 1999 during the signing ceremony in Lomé (www.sierra-leone.org/Archives/slnews0799.html).

ARRESTED DEVELOPMENTS: THE SPECIAL COURT INDICTEES

In terms of sheer numbers, the thirteen indictments of the Special Court were dwarfed by the arrests of hundreds of members of the RUF, AFRC and West Side Boys between 2000 and 2003 and the trials against more than 80 of them accused of murder, treason and other serious crimes. Symbolically, however, the Special Court indictments played a central role in the official narrative of Sierra Leone's new beginning. President Kabbah and the country's political establishment, as well as representatives of the UN, the UK, the US and the Special Court, highlighted the importance of the court for the country's transition from a violent past to a peaceful future. They were endorsed by international activist organizations such as No Peace Without Justice and Human Rights Watch. The Special Court not only symbolized a national new beginning but was also hailed as an important step in the development of international justice. By contrast, the arrests and trials carried out by the national authorities had the nature of ordinary criminal trials against political opponents accused of treason that have been a feature of Sierra Leonean politics since independence (cf. Kandeh 2004).

The exceptional and highly symbolical character of the Special Court indictments warrants closer analysis. This section examines the attempts of the men arrested in 2003 to carve out a niche for themselves in post-war Sierra Leone; it does so by comparison with similar attempts by former commanders of the various armed factions.¹³ It shows that the efforts of the Special Court indictees to establish new livelihoods after the end of the war did not differ substantially from those of former combatants in general; all of them tried to gain social and economic autonomy, although the indictees did so at a much grander scale and with much more success than their followers — until their arrests (Bürge, 2011; Coulter, 2009; Peters, 2005; 2011; Shaw, 2010). After Foday Sankoh died in the custody of the Special Court in July 2003, Sam Hinga Norman, Minister of Internal Affairs at the time of his arrest, and Major Johnny Paul Koroma were the only indictees in Sierra Leone who had political ambitions at the national level.

The three former RUF commanders who remained in the Special Court's detention facility after Sankoh's death had much more modest ambitions than Norman and Koroma.

¹³ The indictment against Charles Taylor, former president of Liberia, is beyond the scope of this analysis; see footnote 1.

After the arrests of the RUF's political wing in May 2000, the RUF field commanders — the 'military wing' — in the north and the east concentrated on the benefits offered by the DDR programme. The Special Court indictees Issa Sesay, Morris Kallon and Augustine Gbao were no exception: at the time of their arrest in March 2003 Sesay and Kallon were in the process of setting up fisheries projects as part of community development initiatives, while Gbao was running an agricultural development project in his home village in Kenema district.¹⁴

Before he was arrested at the Special Court's behest, Sesay was apparently also in negotiation with Oluyemi Adeniji, Special Representative of the UN Secretary General, for a scholarship abroad.¹⁵ In Sierra Leone, various leaders of armed factions have used this strategy to go abroad. The leaders of the National Provisional Ruling Council (NPRC) received scholarships to study in Britain and the US. Valentine Strasser, the former head of state (1992–96), studied at the University of Warwick; former NPRC strongman SAJ Musa received a UN grant to study at Birmingham University; and Tom Nyuma, a former regional NPRC commander, attended college in the US before returning to Sierra Leone where he joined the SLPP in 2007 (Christensen, 2012). Compared to the more ambitious attempts of the RUF political leadership to convert the RUF's military strength into government positions after signing the Lomé Agreement in 1999, Sesay's and his co-accused's efforts to carve out a niche for themselves in the post-conflict order are much more modest. Nevertheless, had they succeeded in getting a sponsorship or leading local development projects they would have turned from rebel commanders into respected community members with a relatively secure livelihood – not a small achievement in a society characterized by abject poverty and few economic opportunities.

The three former soldiers who stood trial at the Special Court had been members of the AFRC and later the West Side Boys. As noted above, the AFRC was formed under the leadership of Major Johnny Paul Koroma after mutinous soldiers had toppled the democratically elected government in May 1997. When they were pushed out of Freetown in February 1998 by Nigerian-led ECOMOG forces, they regrouped in the northern part of Sierra Leone. They then attacked Freetown in January 1999 with the explicit objective of

¹⁴ News reports of 12 March 2003: www.sierra-leone.org/archives/slnews0303.html (accessed 2 August 2010).

¹⁵ Interview with David Crane, 11 June 2008.

being reinstated into the Sierra Leone Army (SLA).¹⁶ According to the TRC report, reintegration into the army continued to be their primary objective after the Lomé Agreement (TRC, 2004: 330, 387). In a surprising move, Kabbah appointed Johnny Paul Koroma as Chairman of the Commission for the Consolidation of Peace (CCP), the body charged with overseeing the implementation of the Agreement, in a bid to ‘engage Koroma in the peace process in the interests of national reconciliation’ (ibid.: 343–4).

Many former AFRC fighters succeeded in filtering back into the SLA, which was being trained by the British, but many others — including former commanders — were less lucky. The largest organized group of former soldiers were the West Side Boys in the Okra Hills east of Freetown. They consisted of former AFRC combatants who had established a base there after their attack on Freetown was repulsed by Nigerian troops in February 1999.¹⁷ The West Side Boys were led by Bazzy Kamara (a Special Court indictee) and Hassan Bangura (aka Bombblast). They professed allegiance to Johnny Paul Koroma and after Koroma was appointed Chairman of the CCP, many of them joined him in Freetown where they acted as his bodyguards. In May 2000, this group acted as an auxiliary force to government troops fighting against the RUF (TRC, 2004: 384–9, 428, 459; Utas and Jörgel, 2008: 503). The West Side Boys’ support for the government was rewarded and their leaders rejoined the army or continued to work as Koroma’s bodyguards (TRC, 2004: 330–1; Utas and Jörgel, 2008: 504).¹⁸

Major Johnny Paul Koroma had been instrumental in neutralizing the RUF as a political force during the events in the beginning of May 2000 and he emerged as a key player in the period between 2000 and 2003. In August 2000, he officially disbanded the AFRC and formed a political party, the Peace and Liberation Party (PLP). He was elected as a Member of Parliament for Wilberforce in Freetown, an area where many soldiers live, in the general elections of May 2002. In January 2003, some of his followers — including Alex Tamba Brima and Santigie Bobor Kanu, who were later indicted by the Special Court for

¹⁶ Trial Chamber Judgement 20 June 2007 Prosecutor v. Brima, Kamara and Kanu, SCSL-04-16-T-613: 72.

¹⁷ Trial Chamber Judgement 20 June 2007 Prosecutor v. Brima, Kamara and Kanu, SCSL-04-16-T-613: 79.

¹⁸ A remnant group stayed in the Okra Hills and abducted a group of British soldiers in August 2000. This group was largely destroyed during a British commando raid to free the hostages: at least twenty-five fighters were killed and eighteen others, including their leader Foday Kallay, were arrested (Telegraph 17 September 2000:

www.telegraph.co.uk/news/worldnews/europe/1355809/Fire-fight-in-the-Occra-Hills.html).

war crimes — were arrested after a failed attack on an armoury in Freetown. Koroma was able to escape and allegedly fled to Liberia. Rumours that he was killed on the orders of Charles Taylor have been vehemently disputed by Taylor's defence lawyers.¹⁹ Koroma's escape came just weeks before his indictment by the Special Court and in spite of the rumours about his death he is officially considered to be still at large. His indictment by the Special Court could have been anticipated: as the leader of the AFRC he was one of the principal suspects and among the first nine persons indicted by the court on 7 March 2003.

By contrast, the leader of the Civil Defence Force, Sam Hinga Norman, then Minister of Internal Affairs, was very surprised when he was arrested on 10 March 2003 since he had not expected to be indicted.²⁰ With the exception of Charles Taylor, who was arrested in 2006, Norman was the most high profile military-political leader to be arrested by the Special Court. The CDF was a pro-government militia that had fought against the rebels of the RUF and the renegade soldiers of the AFRC (Hoffman, 2007), and which was committed to re-establishing the democratically elected government of President Kabbah. CDF was actually an umbrella term for several ethnic militias that had emerged during the early and mid-1990s to defend local communities from attacks by the RUF rebels and marauding government soldiers. The CDF mainly consisted of the Mende ethnic militias known as *kamajors*, the Mende word for traditional hunters (Hoffman, 2007: 642). After the Mende-dominated Sierra Leone People's Party won the general elections in 1996, Norman emerged as leader of the *kamajors* and was appointed deputy Minister of Defence. In 2002, he was appointed Minister of Internal Affairs. According to some observers, Norman claimed a leadership role in the SLPP and was perceived by other SLPP leaders as a threat to their interests (Abraham, 2003). His arrest effectively thwarted any ambition he might have had of playing a leading role in national politics.

During the civil war, the CDF had fought against the RUF and AFRC and sometimes served as an auxiliary force for the West African peacekeeping force, ECOMOG. After disarmament in 2002 many of its commanders set up development projects and NGOs or joined local politics as SLPP functionaries. Others sought office in the chiefdom administrations with which the *kamajors* and the other ethnic militias had been in close contact during the war (Hoffman, 2007: 660). Moinina Fofana, former 'Director of War' of

¹⁹ Special Court for Sierra Leone, Defence Motion for Disclosure of Exculpatory Information relating to DCT-032, 24 September 2010.

²⁰ Interview with David Crane in Utrecht, 11 June 2008.

the CDF, for example, was appointed Chiefdom Speaker, i.e. head of the Paramount Chief's administration, in his native chiefdom. His attempt to convert his high position in the CDF into political office was thwarted by the prosecutors of the Special Court for Sierra Leone who ordered his arrest in June 2003. Another of the accused, Allieu Kondewa, former *kamajor* 'High Priest', had returned to his home area in Bonthe district where he operated as herbalist until his arrest in June 2003.

This account of the Special Court's indictees reveals a complex and volatile political landscape in which the former commanders and leaders worked hard to find a position which would provide them with political influence, material security or at least safety from their political opponents. It juxtaposes the struggles of the men who were presented as the main culprits with the lofty promises of justice made by the Special Court for Sierra Leone. The arrests of the leaders of the three groups led to three separate trials at the Special Court's compound in the capital. The trial against Sesay, Kallon and Gbao, the so-called RUF trial, began in July 2004 and concluded on 25 February 2009, when the trial chamber found Sesay and Kallon guilty on sixteen counts and Gbao on fourteen counts. Sesay was sentenced to fifty-two years imprisonment, Kallon to forty years and Gbao to twenty-five years, minus the time served since their arrest. In a decision delivered on 26 October 2009, the Appeals Chamber upheld these convictions. The trial against three leaders of the AFRC, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, started in March 2005. The trial chamber delivered its judgement on 20 June 2007 and convicted the accused on eleven counts. Brima was sentenced to fifty years, Kamara to forty-five years and Kanu to fifty years, minus time served. These convictions, too, were upheld by the court's Appeals Chamber. The trial against three CDF leaders, Sam Hinga Norman, Moinina Fofana and Allieu Kondewa, began in June 2004. Norman died in February 2007 while undergoing medical treatment in Dakar, Senegal (SCSL 2007). On 2 August 2007 the trial chamber found the remaining two accused guilty on four counts and sentenced them to six and eight years, including time served. The Appeals Chamber overturned these sentences, and sentenced Fofana to fifteen years and Kondewa to twenty years, minus time served.²¹

²¹ On 31 October 2009, the eight convicted men were transferred to a prison in Rwanda where they are currently serving their sentences. This decision was taken because the prisons in Sierra Leone do not meet international standards, while Rwanda had capacity in a prison in which convicts of the International Criminal Tribunal for Rwanda were supposed to be detained (SCSL, 2009).

CONCLUSIONS

Regardless of the concept of justice one adheres to, the Special Court for Sierra Leone largely failed to deliver its lofty promises. Supporters of a retributive vision of justice were disappointed that only thirteen individuals were indicted for bearing ‘greatest responsibility’ for the war crimes and crimes against humanity committed during the civil war. Amnesty International criticized the indictment of only a ‘small number of the persons responsible for the numerous crimes committed’ (AI, 2008). On the other hand, proponents of more holistic approaches such as the TRC, failed to see how the symbolical punishment of a few men could contribute to coming to terms with the country’s violent past. In the TRC’s opinion, the Special Court’s emphasis on punishment undermined the TRC’s ‘restorative and healing objectives’ (TRC, 2004: 18).

The evidence presented in this article casts doubt on the claims to justice advanced by both organizations and suggests that Sierra Leone’s experiment with transitional justice had a much more mixed outcome. The Special Court has been presented as standing above the national legal framework and outside the national political landscape, but in fact it was the product of a violent conflict in which the RUF, and later the AFRC/West Side Boys, were marginalized and ceased to play a decisive role in national politics. The arrests, detentions and trials were one of the means employed by the government led by President Kabbah in this conflict between the political establishment and the rebels who sought to convert their wartime exploits into political office and material security. The TRC, in turn, delivered a damning verdict on the human rights record of Kabbah’s government and the extensive use of the state of emergency, although its recommendations in this regard have never been implemented or even acknowledged by the government.

Both organizations were part of the national political arena and have to be seen in the context of the multi-faceted and contested new beginning that was characterized by the attempts of politico-military leaders and commanders to convert their military strength into political and economic capital after the end of the war. The transition period was contradictory and by no means the linear progression from war to democracy suggested by the official narratives. Behind the façade of official commitments to peace and justice the leaders of the various factions were engaged in a bitter power struggle over the terms of the

new beginning. In the meantime, tens of thousands of their followers went through the DDR process and tried to make a life for themselves under conditions of abject poverty and with little prospect of improvement. For the hundreds of members of the RUF and West Side Boys who were detained at Pademba Road Prison for up to six years the situation has been even more difficult: they were cut off from society during their detention and now carry the stigma of ex-detainees. In this sense, the new beginning in Sierra Leone displays many features of the pattern of doing politics or ‘politricks’ (Christensen and Utas, 2008) that has characterized Sierra Leone since independence.

The discrepancy between the official narrative of a new beginning effected by means of handing down justice and holding accountable the perpetrators of violence according to the strict principles of international rule of law and the messy reality of post-conflict politricks, mass arrests under a state of emergency and protracted trials in the national courts is exemplified in the urban topography of Freetown. From a strictly legal perspective, the Special Court’s narrow and compartmentalized approach was arguably justified but the fact that its representatives ignored the detainees in Pademba Road Prison, just a few hundred metres down the road from the court’s compound, raises doubts about its wider contribution to national reconciliation and justice in Sierra Leone. In fact, several men indicted by the Special Court were transferred from Pademba Road Prison but the court’s representatives refused to address the contradiction between their promise to deliver justice and the detention of hundreds of people under a state of emergency in a prison failing to meet international standards.

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